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**From:** LIVSHIZ, David  
**Sent:** Tuesday, August 13, 2019 3:48 PM  
**To:** 'Melius, Niels J'  
**Cc:** 'Christopher.Stecher@kyl.com'; TAN, Amy; 'bsimon@wc.com'; 'jpitt@wc.com'; 'Wohlgemuth, Stephen'; DiCanio, Jack P; Casey, William J; HARKNESS, Timothy (TXH)  
**Subject:** RE: Ex Parte Application of Palantir Technologies Inc., Case No. 3:18-mc-80132-JSC  
**Attachments:** 2019-08-13 DRAFT Protective Order.docx

Dear Niels,

Thank you for your email. While we normally try to provide courtesy extensions to accommodate counsel's scheduling conflicts, Palantir cannot consent to adjourning the status conference by nearly a month. Palantir's application has already been delayed by almost a year—a delay caused in substantial part by your refusal to accept service of the complaint in the German litigation notwithstanding that Mr. Abramowitz was well aware of the German litigation (and, indeed, had a translated copy of the complaint). Moreover, not only did Skadden and Williams & Connolly refuse to accept service, they instructed Mr. Abramowitz's German counsel to do likewise. In light of the resulting delay, we are not in a position to agree to a further delay of the proceedings.

Turning to a different subject, we had previously proposed that the parties meet and confer concerning the scope of the discovery sought by the Applicant. Mr. Abramowitz previously declined to do so. As Mr. Abramowitz's motion for an anti-suit injunction has now been denied, please let us know if Mr. Abramowitz is available to meet and confer concerning the scope of discovery sought by the Applicant and the form of confidentiality agreement. To assist us in our discussion, I attach the Northern District of California model stipulated protective order for patent cases which we can use as a jumping off point.

Kind regards,  
David

**David Y. Livshiz**  
Counsel

**Freshfields Bruckhaus Deringer US LLP**

601 Lexington Avenue  
31st Floor  
New York, New York 10022  
T +1 212 284 4979  
M +1 646 886 0001  
F +1 646 521 5779  
[david.livshiz@freshfields.com](mailto:david.livshiz@freshfields.com)  
[www.freshfields.com](http://www.freshfields.com)

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**From:** Melius, Niels J [<mailto:Niels.Melius@skadden.com>]  
**Sent:** Tuesday, August 13, 2019 1:35 PM  
**To:** LIVSHIZ, David  
**Cc:** 'Christopher.Stecher@kyl.com'; TAN, Amy; 'bsimon@wc.com'; 'jpitt@wc.com'; 'Wohlgemuth, Stephen'; DiCanio, Jack P; Casey, William J  
**Subject:** RE: Ex Parte Application of Palantir Technologies Inc., Case No. 3:18-mc-80132-JSC

Hi David,

Following up on the below. Could you please let us know if you are available on 9/26 for the status conference?

Regards,  
Niels

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**From:** Melius, Niels J (PAL)  
**Sent:** Friday, August 09, 2019 6:10 PM  
**To:** 'David.LIVSHIZ@freshfields.com'  
**Cc:** [Christopher.Stecher@kyl.com](mailto:Christopher.Stecher@kyl.com); [Amy.TAN@freshfields.com](mailto:Amy.TAN@freshfields.com); [bsimon@wc.com](mailto:bsimon@wc.com); [jpitt@wc.com](mailto:jpitt@wc.com); Wohlgemuth, Stephen; DiCanio, Jack P (PAL); Casey, William J (PAL)  
**Subject:** Ex Parte Application of Palantir Technologies Inc., Case No. 3:18-mc-80132-JSC

David,

As you know, a status conference was scheduled for 8/29 in *Ex Parte Application of Palantir Technologies Inc.*, Case No. 3:18-mc-80132-JSC. Respondent's counsel are unavailable on 8/29. Judge Corley's calendar clerk, Ms. Means, provided alternative available dates earlier today: 9/12 and 9/26. The 9/12 option conflicts with the hearing on Palantir's motion to seal in the California state court action. Given the alternatives provided by the calendar clerk, Respondent's counsel are available on 9/26. The clerk indicated that the parties may file a stipulation and proposed order to continue the status conference to 9/26, if you agree. Please let us know if you are amenable to such a stipulation. Thank you.

Regards,  
Niels

**Niels J. Melius**  
Associate  
Skadden, Arps, Slate, Meagher & Flom LLP  
525 University Avenue | Palo Alto | California | 94301-1908  
T: 650.470.4640 | F: 650.798.6519  
[niels.melius@skadden.com](mailto:niels.melius@skadden.com)

Skadden

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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(171026:0001)

CHRISTOPHER A. STECHER, CASB No. 215329  
christopher.stecher@kyl.com  
KEESAL, YOUNG & LOGAN  
A Professional Corporation  
450 Pacific Avenue  
San Francisco, California 94133  
Telephone: (415) 398-6000  
Facsimile: (415) 981-0136

TIMOTHY P. HARKNESS (*pro hac vice to be filed*)  
timothy.harkness@freshfields.com  
DAVID Y. LIVSHIZ (*pro hac vice*)  
david.livshiz@freshfields.com  
AMY TAN (*pro hac vice*)  
amy.tan@freshfields.com  
FRESHFIELDS BRUCKHAUS DERINGER US LLP  
601 Lexington Avenue, 31st Floor  
New York, New York 10022  
Telephone: (212) 277-4000  
Facsimile: (212) 277-4001

*Attorneys for Applicant Palantir Technologies, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

	)	Case No.: 3:18-mc-80132-JSC
	)	
	)	<b>JOINT STIPULATED PROTECTIVE ORDER</b>
	)	
IN RE : <u>EX PARTE</u> APPLICATION OF PALANTIR	)	Date: <b>[DATE]</b>
TECHNOLOGIES, INC. FOR AN ORDER	)	Judge: Hon. Jacqueline Scott Corley
PURSUANT TO 28 U.S.C. § 1782 TO OBTAIN	)	(Courtroom F)
DISCOVERY FOR USE IN FOREIGN	)	
PROCEEDINGS	)	
	)	
	)	
	)	
	)	
	)	

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Applicant Palantir Technologies Inc. (*Palantir*) and Marc L. Abramowitz (*Abramowitz*) respectfully submit this Joint Stipulated Protective Order in the above-captioned matter (the *Action*). Palantir and Abramowitz are collectively referred to as the *Parties*. Through the Action, Palantir seeks discovery for use in *Palantir Technologies, Inc. v. Marc L. Abramowitz*, pending in the Regional Court of Munich, Federal Republic of Germany (file no. 21 O 11054/18) (the *German Proceeding*), together with the Action, the *Litigations*.

1           1.       PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this Action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting the Litigations may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does not  
7 confer blanket protections on all disclosures or responses to discovery and that the protection  
8 it affords from public disclosure and use extends only to the limited information or items that  
9 are entitled to confidential treatment under the applicable legal principles. The parties further  
10 acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does  
11 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth  
12 the procedures that must be followed and the standards that will be applied when a party  
13 seeks permission from the court to file material under seal.

14           2.       DEFINITIONS

15           2.1       Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17           2.2       “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
19 of Civil Procedure 26(c).

20           2.3       Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
21 well as their support staff).

22           2.4       Designating Party: a Party or Non-Party that designates information or items that  
23 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

25           2.5       Disclosure or Discovery Material: all items or information, regardless of the  
26 medium or manner in which it is generated, stored, or maintained (including, among other things,  
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
28 responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in the Litigations, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 House Counsel: attorneys who are employees of a party to this Action who are engaged in work on the Litigations. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to the Litigations.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party in the Litigations and have appeared in this Action or in the German Proceeding on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
3 Producing Party.

4  
5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only Protected Material  
7 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
8 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
10 However, the protections conferred by this Stipulation and Order do not cover the following  
11 information: (a) any information that is in the public domain at the time of disclosure to a  
12 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
13 a result of publication not involving a violation of this Order, including becoming part of the  
14 public record through trial or otherwise; and (b) any information known to the Receiving Party  
15 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
16 obtained the information lawfully and under no obligation of confidentiality to the Designating  
17 Party.

18 4. DURATION

19 Even after final disposition of this Action, the confidentiality obligations imposed by this  
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
21 otherwise directs. Final disposition shall be deemed to be final judgment in the German  
22 Proceeding or in this Action, whichever comes last, after the completion and exhaustion of all  
23 appeals, rehearings, remands, or reviews of the Litigations, including the time limits for filing  
24 any motions or applications for extension of time pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
27 or Non-Party that designates information or items for protection under this Order must take care  
28 to limit any such designation to specific material that qualifies under the appropriate standards.

1 To the extent it is practical to do so, the Designating Party must designate for protection only  
2 those parts of material, documents, items, or oral or written communications that qualify – so that  
3 other portions of the material, documents, items, or communications for which protection is not  
4 warranted are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
6 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
7 unnecessarily encumber or retard the case development process or to impose unnecessary  
8 expenses and burdens on other parties) expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it designated  
10 for protection do not qualify for protection at all or do not qualify for the level of protection  
11 initially asserted, that Designating Party must promptly notify all other parties that it is  
12 withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
14 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
15 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
16 designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but  
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
20 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
21 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a  
22 portion or portions of the material on a page qualifies for protection, the Producing Party  
23 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
24 in the margins) and must specify, for each portion, the level of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for inspection  
26 need not designate them for protection until after the inspecting Party has indicated  
27 which material it would like copied and produced. During the inspection and before the  
28

1 designation, all of the material made available for inspection shall be deemed “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has  
3 identified the documents it wants copied and produced, the Producing Party must  
4 determine which documents, or portions thereof, qualify for protection under this Order.  
5 Then, before producing the specified documents, the Producing Party must affix the  
6 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a  
8 portion or portions of the material on a page qualifies for protection, the Producing Party  
9 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
10 in the margins) and must specify, for each portion, the level of protection being asserted.  
11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
12 Designating Party identify on the record, before the close of the deposition, hearing, or  
13 other proceeding, all protected testimony and specify the level of protection being  
14 asserted. When it is impractical to identify separately each portion of testimony that is  
15 entitled to protection and it appears that substantial portions of the testimony may qualify  
16 for protection, the Designating Party may invoke on the record (before the deposition,  
17 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the  
18 specific portions of the testimony as to which protection is sought and to specify the level  
19 of protection being asserted. Only those portions of the testimony that are appropriately  
20 designated for protection within the 21 days shall be covered by the provisions of this  
21 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
22 deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
23 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY.”

25 Parties shall give the other parties notice if they reasonably expect a deposition, hearing  
26 or other proceeding to include Protected Material so that the other parties can ensure that  
27 only authorized individuals who have signed the “Acknowledgment and Agreement to  
28



Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party.

The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend

“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
2 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
4 original designation is disclosed.

5       6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
6 process by providing written notice of each designation it is challenging and describing the basis  
7 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
8 notice must recite that the challenge to confidentiality is being made in accordance with this  
9 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
10 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
11 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
12 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
13 designation was not proper and must give the Designating Party an opportunity to review the  
14 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
15 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
16 stage of the challenge process only if it has engaged in this meet and confer process first or  
17 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
18 a timely manner.

19       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
20 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
21 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
22 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
23 process will not resolve their dispute, whichever is earlier. Each such motion must be  
24 accompanied by a competent declaration affirming that the movant has complied with the meet  
25 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
26 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
27 shall automatically waive the confidentiality designation for each challenged designation. In  
28

1 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
 2 time if there is good cause for doing so, including a challenge to the designation of a deposition  
 3 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
 4 accompanied by a competent declaration affirming that the movant has complied with the meet  
 5 and confer requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 7 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 8 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 9 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 10 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 11 material in question the level of protection to which it is entitled under the Producing Party's  
 12 designation until the court rules on the challenge.

#### 13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 15 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 16 defending, or attempting to settle the Litigations. Such Protected Material may be disclosed only  
 17 to the categories of persons and under the conditions described in this Order. When the  
 18 Litigations have been terminated, a Receiving Party must comply with the provisions of section  
 19 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location and  
 21 in a secure manner that ensures that access is limited to the persons authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
 23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 24 disclose any information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in the Litigations, as well as  
 26 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 27 information for the Litigations and who have signed the "Acknowledgment and Agreement to Be  
 28

Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Application or the German Proceeding and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Application or the German Proceeding and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this Application or the German Proceeding and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the Litigations to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in the Litigations, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the

1 information for the Litigations and who have signed the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A;

3 (b) House Counsel of the Receiving Party (1) who has no involvement in  
4 competitive decision-making, (2) to whom disclosure is reasonably necessary for the Litigations,  
5 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as  
6 to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

7 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
8 necessary for the Litigations, (2) who have signed the “Acknowledgment and Agreement to Be  
9 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
10 have been followed;

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, and  
13 Professional Vendors to whom disclosure is reasonably necessary for the Litigations and who  
14 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

15 (f) the author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the information.

17 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to House Counsel or  
19 Experts.

20 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
21 Designating Party, a Party that seeks to disclose to House Counsel any information or item that  
22 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
23 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the  
24 full name of the House Counsel and the city and state of his or her residence, and (2) describes  
25 the House Counsel’s current and reasonably foreseeable future primary job duties and  
26 responsibilities in sufficient detail to determine if House Counsel is involved, or may become  
27 involved, in any competitive decision-making.  
28

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking

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<sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 permission from the court to do so. Any such motion must describe the circumstances with  
 2 specificity, set forth in detail the reasons why the disclosure to House Counsel or the Expert is  
 3 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any  
 4 additional means that could be used to reduce that risk. In addition, any such motion must be  
 5 accompanied by a competent declaration describing the parties' efforts to resolve the matter by  
 6 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
 7 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

8 In any such proceeding, the Party opposing disclosure to House Counsel or the Expert  
 9 shall bear the burden of proving that the risk of harm that the disclosure would entail (under the  
 10 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to  
 11 its House Counsel or Expert.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 13 OTHER LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that  
 15 compels disclosure of any information or items designated in this Action as "CONFIDENTIAL"  
 16 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall  
 18 include a copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to  
 20 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 21 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
 22 Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued  
 24 by the Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the  
 26 subpoena or court order shall not produce any information designated in this Action as  
 27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a  
 28

determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with this Action is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-



1 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
 2 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
 3 determination by the court.<sup>2</sup> Absent a court order to the contrary, the Non-Party shall bear the  
 4 burden and expense of seeking protection in this court of its Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
 7 Protected Material to any person or in any circumstance not authorized under this Stipulated  
 8 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating  
 9 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of  
 10 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
 11 made of all the terms of this Order, and (d) request such person or persons to execute the  
 12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain  
 16 inadvertently produced material is subject to a claim of privilege or other protection, the  
 17 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
 18 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in  
 19 an e-discovery order that provides for production without prior privilege review. Pursuant to  
 20 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect  
 21 of disclosure of a communication or information covered by the attorney-client privilege or work  
 22 product protection, the parties may incorporate their agreement in the stipulated protective order  
 23 submitted to the court.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
 26 \_\_\_\_\_

27 <sup>2</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party  
 28 and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 seek its modification by the court in the future.

2 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
3 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
4 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
5 no Party waives any right to object on any ground to use in evidence of any of the material  
6 covered by this Protective Order.

7 12.3 Filing Protected Material. Without written permission from the Designating  
8 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
9 file in the public record in this Action any Protected Material. A Party that seeks to file under seal  
10 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
11 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
12 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
13 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
14 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
15 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
16 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
17 79-5(e)(2) unless otherwise instructed by the court.

18 13. FINAL DISPOSITION

19 Within 60 days after the final disposition of the Litigations, as defined in paragraph  
20 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such  
21 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
22 compilations, summaries, and any other format reproducing or capturing any of the Protected  
23 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
24 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
25 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
26 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
27 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
28

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
3 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
4 product, and consultant and expert work product, even if such materials contain Protected  
5 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
6 this Protective Order as set forth in Section 4 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8  
9 DATED: \_\_\_\_\_  
Attorneys for Plaintiff

10  
11 DATED: \_\_\_\_\_  
Attorneys for Defendant

12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13  
14 DATED: \_\_\_\_\_  
[Name of Judge]  
United States District/Magistrate Judge  
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
 in its entirety and understand the Stipulated Protective Order that was issued by the United States  
 District Court for the Northern District of California on [date] in the case of Ex Parte Application  
 of Palantir Technologies, Inc. for an Order Pursuant to 28 U.S.C. § 1782 to Obtain Discovery for  
 Use in Foreign Proceedings (Case No.: 3:18-mc-80132-JSC). I agree to comply with and to be  
 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
 solemnly promise that I will not disclose in any manner any information or item that is subject to  
 this Stipulated Protective Order to any person or entity except in strict compliance with the  
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Northern District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this Action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone  
 number] as my California agent for service of process in connection with this Action or any  
 proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_